

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

**United States District Court
Southern District of Texas
ENTERED**

FEB 27 2008

Michael N. Milby, Clerk of Court
By Deputy Clerk Wolens

LEXINGTON INSURANCE CO.,

Plaintiff,

v.

CIVIL ACTION NO. B-07-211

PENN OCTANE CORP.; RIO VISTA GP LLC; RIO VISTA ENERGY PARTNER L.P.; RIO VISTA OPERATING GP LLC; RIO VISTA OPERATING PARTNERSHIP L.P.; PENN WILSON CNG, INC.; PENN CNG HOLDINGS, INC.; and PENN OCTANE INTERNATIONAL, L.L.C.,

Defendants.

ORDER & OPINION

BE IT REMEMBERED, that on February 27, 2008, the Court considered Plaintiff's Unopposed Motion to Dismiss without Prejudice. Dkt. No. 6.

Plaintiff, Lexington Insurance Company, initiated suit against Defendants on December 12, 2007. Dkt. No. 1. Defendants did not file an answer nor did they file a motion for summary judgment, although their motion to dismiss pursuant to Rule 12(b)(1) is pending before this Court, Dkt. No. 3. This Court received Plaintiff's motion to dismiss on February 8, 2008. Dkt. No. 3. Plaintiff's motion is governed by Rule 41(a)(1)(i). FED. R.CIV.P. 41(a)(1)(i) ("[A]n action may be dismissed by the plaintiff without an order of court . . . by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever occurs first."). This Court construes Plaintiff's motion to dismiss as a notice of dismissal.

Therefore, pursuant to Federal Rule of Civil Procedure 42(a)(1)(i), the Court **GRANTS** Plaintiff's Motion for Dismissal without Prejudice. Dkt. No. 3. The instant action is hereby dismissed without prejudice. *Id.* Accordingly, the Court **ORDERS** the Clerk of

the Court to close this case. Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, Dkt. No. 3, is thereby rendered **MOOT**.

DONE at Brownsville, Texas, on February 27, 2008.



Hilda G. Tagle
United States District Judge